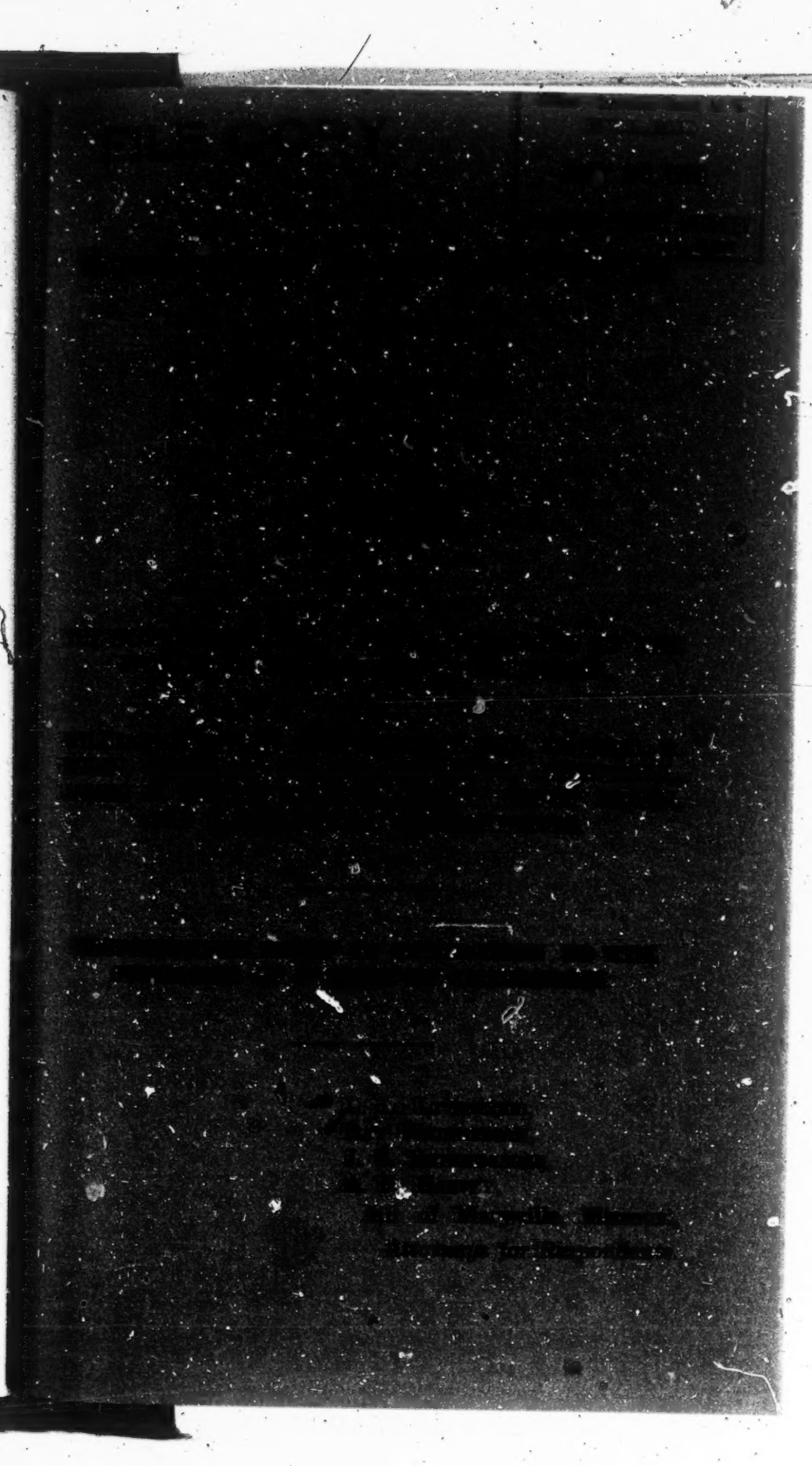

INDEX

Suggestions in Opposition to the Issuance of a Writ of Certiorari to the Kansas City Court of Appeals of the State of Missouri 1

Summary statement of the matter involved 1

Summary of Argument 4

Argument 7

Conclusion 12

Table of Cases

Allen vs. Arguimbau, 198 U. S. 149, 154, 155, 25 S. Ct. 622, 49 L. Ed. 990 8

Aloe vs. Fidelity Mutual Life Ass'n, 164 Mo. 675 ..... 6, 12

Brassfield vs. Knights of the Maccabees, 92 Mo. App. 102 6

Consolidated Turnpike Co. vs. Norfolk & Ocean View Railway Co., 228 U. S. 596, 599, 33 S. Ct. 605, 57 L. Ed. 982 8

Cuyahoga Power Co. vs. Northern Realty Co., 244 U. S. 300, 302, 304, 37 S. Ct. 643, 61 L. Ed. 1153 8

De Saussure vs. Gaillard, 127 U. S. 216, 234, 8 S. Ct. 1053, 32 L. Ed. 125 ..... 4, 8

Eastern Building & Loan Ass'n vs. Williamson, 189 U. S. 122, 23 S. Ct. 527 4

Eustis vs. Bolles, 150 U. S. 361, 366, 367, 14 S. Ct. 131, 37 L. Ed. 1111 8

Equitable Life Assurance Society vs. Pettus, 140 U. S. 226, 11 S. Ct. 822, 35 L. Ed. 497 ..... 5, 14

Gruwell vs. Knights & Ladies of Security, 126 Mo. App. 496 6

Harris vs. Switchmen's Union of North America, 237 S. W. 155 6

Johnson vs. Risk, 137 U. S. 300, 306, 307, 11 S. Ct. 111, 34 L. Ed. 683 8

Kern vs. Legion of Honor, 167 Mo. 471 6

Lynch vs. People of New York ex rel. Pierson, 293 U. S. 52, 55 S. Ct. 16, 75 L. Ed. 191 4,7

Mathews vs. Modern Woodmen, 236 Mo. 326 6

Mellon, Director General of Railroads, vs. O'Neil, 275 U. S. 212, 48 S. Ct. 62, 72 L. Ed. 245 4,8

Moore vs. Mississippi, 21 Wall. 636, 639, 22 L. Ed. 653 4

Murdock vs. City of Memphis, 20 Wall. 590, 635, 636, 22 L. Ed. 429 4

Mutual Life Ins. Co. of New York vs. Johnson, 293 U. S. 335, 55 S. Ct. 154 ..... 5, 14

New York Life Insurance Co. vs. Cravens, 178 U. S. 389, 20 S. Ct. 962, affirming case of Cravens vs. New York Life Insurance Co., 148 Mo. 583, 53 L. R. A. 305, 71 Am. St. Rep. 628 ..... 5, 6, 9, 14

Neff vs. Sovereign Camp, W. O. W., 286 U. S. 549, 52 S. Ct. 501, 226 Mo. App. 899, 48 S. W. (2d) 564 4,5

Northwestern Mutual Life Ins. Co. vs. McCue, 223 U. S. 234, 32 S. Ct. 220, 56 L. Ed. 419 ..... 5, 9-10, 14

Ragsdale vs. Brotherhood of Railroad Trainmen, 80 S. W. (2d) 272 5

Smith vs. Foresters, 228 Mo. 675 6

Southwestern Bell Telephone Co. vs. State of Oklahoma et al., 58 S. Ct. 528 4

Supreme Council Royal Arcanum vs. Green, 237 U. S. 542, 59 L. Ed. 1100, 35 Supreme Court Reporter 724 12

Thompson vs. Royal Neighbors of America, 154 Mo. App. 109 6

Waters-Pierce Oil Company vs. Texas, 212 U. S. 86, 29 S. Ct. 220 4

Whitney vs. People of the State of California, 274 U. S. 357, 47 S. Ct. 641, 71 L. Ed. 1095 4,8

Wood Mowing and Reaping Machine Co. vs. Skinner, 139 U. S. 293, 295, 297, 11 S. Ct. 528, 35 L. Ed. 193 4,8

Woodmen of America vs. Mixer, 267 U. S. 544, 69 L. Ed. 783, 45 Sup. Court Reporter 369 12

Supreme Court of the United States

OCTOBER TERM, 1937.

No. 1016.

THE SOVEREIGN CAMP OF THE WOODMEN OF THE WORLD, A CORPORATION, PETITIONER,

VS.

WILLIAM F. BOLIN, EDWARD E. BOLIN, SAMUEL A. BOLIN, JOHN O. BOLIN, SARAH B. CAMPBELL, JAMES D. BOLIN, ELAINE SCOTT, PERRY BOLIN, AND DEAN BOLIN, RESPONDENTS.

SUGGESTIONS IN OPPOSITION TO THE ISSUANCE OF A WRIT OF CERTIORARI TO THE KANSAS CITY COURT OF APPEALS OF THE STATE OF MISSOURI.

To the Honorable Charles Evans Hughes, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Summary statement of the matter involved.

The respondents, William F. Bolin, Edward E. Bolin, Samuel A. Bolin, John O. Bolin, Sarah B. Campbell, James D. Bolin, Elaine Scott, Perry Bolin and Dean Bolin respectfully show to this Honorable Court that they are

respondents herein and are the sole and only heirs at law of one Pleasant Bolin, deceased.

These respondents further respectfully show to the court that on the 13th day of April, 1934 (Rec. 143-145), they obtained a judgment against the petitioner herein for eleven hundred dollars ($1100.00); that thereafter, after an unavailing motion for a new trial, the petitioner herein was granted an appeal to the Supreme Court of the State of Missouri; that preliminary to the hearing of said cause in the Supreme Court of the State of Missouri, these respondents filed a motion in said court, which said motion constituted a part of the brief filed in said court by respondents, to transfer said cause to the Kansas City Court of Appeals on the ground that no federal question was involved. The Supreme Court of the State of Missouri, in its opinion duly rendered (Rec. 170-173), sustained the contentions of these respondents and held that the paramount issue for determination was whether or not the contract in question was a Missouri contract or a Nebraska contract and further ordered the cause transferred to said Kansas City Court of Appeals. Thereafter said cause was heard and determined by said Kansas City Court of Appeals (Rec. 174-192) and upon a motion for rehearing, a subsequent opinion was filed in said cause (Rec. 199-216). Upon a further motion for rehearing, an additional opinion was filed in said court (Rec. 217-219). In all of said opinions herein referred to, both the Supreme Court of the State of Missouri and the Kansas City Court of Appeals took the position that no federal question was involved in the decision of said

cause and that because of the state of the pleadings and proof, the decision must be made upon independent state grounds.

For brevity's sake, we shall not make any further statement of the facts involved as they are set out at length in the opinion.

It is the contention of these respondents that the pleadings and proof in this case justify the judgment rendered; that said judgment is the only one which could have been rendered under the pleadings and proof; that the judgment rests upon independent state grounds which are sufficient to sustain it and that the decision of the federal question was not necessary to a proper judgment in the cause and that under the facts and circumstances and legal points involved a writ of certiorari should not issue from this Honorable Court to the said Kansas City Court of Appeals.

SUMMARY OF ARGUMENT.

A.

The opinion of the state court rendered in this cause shows that it was not rendered upon a federal question, that it was not necessary to the determination of the cause that a federal question should actually be decided, and that the judgment rendered was made without deciding any federal question and rests upon independent state grounds. Therefore the Supreme Court of the United States will not take jurisdiction.

Lynch v. *People of New York ex rel. Pierson*, 293 U. S. 52, 55 S. Ct. 16, 75 L. Ed. 191.

Southwestern Bell Telephone Co. v. *State of Oklahoma et al.*, 58 S. Ct. 528.

Eastern Building & Loan Ass'n v. *Williamson*, 189 U. S. 122, 23 S. Ct. 527.

De Saussure v. *Gaillard*, 127 U. S. 216, 234, 8 S. Ct. 1053, 32 L. Ed. 125.

Wood Mowing and Reaping Machine Co. v. *Skinner*, 139 U. S. 293, 295, 297, 11 S. Ct. 528, 35 L. Ed. 193.

Mellon, Director General of Railroads, v. *O'Neil*, 275 U. S. 212, 48 S. Ct. 62, 72 L. Ed. 245.

Whitney v. *People of the State of California*, 274 U. S. 357, 47 S. Ct. 641, 71 L. Ed. 1095.

Moore v. *Mississippi*, 21 Wall. 636, 639, 22 L. Ed. 653.

Murdock v. *City of Memphis*, 20 Wall. 590, 635, 636, 22 L. Ed. 429.

Neff v. *Sovereign Camp, W. O. W.*, 286 U. S. 549, 52 S. Ct. 501, 226 Mo. App. 899, 48 S. W. (2d) 564.

Waters-Pierce Oil Company v. *Texas*, 212 U. S. 86, 29 S. Ct. 220.

B.

The certificate was delivered to and accepted by Pleasant Bolin, the insured, in this state. He paid all of the dues and assessments thereon in this state. This makes it a Missouri contract to which the laws of Missouri apply and by the laws of which it is governed; and the issues concerning it are to be adjudicated in accordance with the decisions of the courts of Missouri.

New York Life Ins. Co. v. *Cravens,* 178 U. S. 389, 20 S. Ct. 962, 148 Mo. 583.

Mutual Life Ins. Co. of New York v. *Johnson,* 293 U. S. 335, 55 S. Ct. 154.

Northwestern Mutual Life Ins. Co. v. *McCue,* 223 U. S. 234, 32 S. Ct. 220, 56 L. Ed. 419.

Equitable Life Assurance Society v. *Pettus,* 140 U. S. 226, 11 S. Ct. 822, 35 L. Ed. 497.

Neff v. *Sovereign Camp, W. O. W.,* 286 U. S. 549, 52 S. Ct. 501, 226 Mo. App. 899, 48 S. W. (2d) 564.

Ragsdale v. *Brotherhood of Railroad Trainmen,* 80 S. W. (2d) 272.

C.

At the time of the issuance of this policy of insurance, Sections 2823 to 2827, both inclusive, of the Revised Statutes of Missouri of 1889, were in full force and effect in this state, and this foreign insurance concern was governed by the general insurance laws of Missouri at the time it issued the policy in suit.

Unless it had been proven on the trial that at the time this certificate was issued, June 5, 1896, this company was authorized to transact business in Missouri as a fraternal benefit company, its policies issued and de-

livered in Missouri to Missouri residents and citizens, payable in Missouri, with premiums payable in Missouri, were governed solely under the old line insurance laws of the State of Missouri. Such proof was not made.

Kern v. *Legion of Honor*, 167 Mo. 471.

Harris v. *Switchmen's Union of North America*, 237 S. W. 155.

New York Life Insurance Co. v. *Cravens*, 178 U. S. 389, 20 S. Ct. 962, affirming case of *Cravens* v. *New York Life Insurance Co.*, 148 Mo. 583, 53 L. R. A. 305, 71 Am. St. Rep. 628.

Gruwell v. *Knights & Ladies of Security*, 126 Mo. App. 496.

Brassfield v. *Knights of the Maccabees*, 92 Mo. App. 102.

Thompson v. *Royal Neighbors of America*, 154 Mo. App. 109.

Smith v. *Foresters*, 228 Mo. 675.

Mathews v. *Modern Woodmen*, 236 Mo. 326.

Aloe v. *Fidelity Mutual Life Ass'n*, 164 Mo. 675.

ARGUMENT.

(a) At the outset respondents contend that the judgment rendered in the instant case rests upon independent state grounds, and that the state grounds upon which the opinion rests are adequate to support the judgment.

Respondents further contend that the decision of a federal question was not necessary to the determination of the cause and furthermore that the judgment as rendered could well have been given and was as a matter of fact given without the necessity of deciding any federal question. Where this situation exists, this Honorable Court will not assume jurisdiction. This principle of law has been enunciated on many occasions by this court and in the summary of argument (A, *supra*), we have called attention to said decisions.

One of the quite recent cases announcing this principle is *Lynch* v. *People of New York ex rel. Pierson*, 293 U. S. 52, 55 S. Ct. 16, 75 L. Ed. 191, and on l. c. 17, 55 S. Ct. 16, the following quotation tersely summarizes this point of law:

> "It is essential to the jurisdiction of this court in reviewing a decision of a court of a state that it must appear affirmatively from the record, not only that a federal question was presented for decision to the highest court of the state having jurisdiction, but that its decision of the federal question was necessary to the determination of the cause, and that

it was actually decided or that the judgment as rendered could not have been given without deciding it."

De Saussure v. *Gaillard*, 127 U. S. 216, 234, 8 S. Ct. 1053, 32 L. Ed. 125.

Johnson v. *Risk*, 137 U. S. 300, 306, 307, 11 S. Ct. 111, 34 L. Ed. 683.

Walter A. Wood Mowing & Reaping Machine Co. v. *Skinner*, 139 U. S. 293, 295, 297, 11 S. Ct. 528, 35 L. Ed. 193.

Eustis v. *Bolles*, 150 U. S. 361, 366, 367, 14 S. Ct. 131, 37 L. Ed. 1111.

Whitney v. *California*, 274 U. S. 357, 360, 361, 47 S. Ct. 641, 71 L. Ed. 1095.

Mellon v. *O'Neil*, 275 U. S. 212, 214, 48 S. Ct. 62, 72 L. Ed. 245.

"Where the judgment of the state court rests on two grounds, one involving a federal question and the other not, or if it does not appear upon which of two grounds the judgment was based, and the ground independent of a federal question is sufficient in itself to sustain it, this court will not take jurisdiction."

Allen v. *Arguimbau*, 198 U. S. 149, 154, 155, 25 S. Ct. 622, 49 L. Ed. 990.

Johnson v. *Risk*, *supra*.

Walter A. Wood Mowing & Reaping Machine Co. v. *Skinner*, *supra*.

Consolidated Turnpike Co. v. *Norfolk & Ocean View Railway Co.*, 228 U. S. 596, 599, 33 S. Ct. 605, 57 L. Ed. 982.

Cuyahoga Power Co. v. *Northern Realty Co.*, 244 U. S. 300, 302, 304, 37 S. Ct. 643, 61 L. Ed. 1153.

(b) One of the independent state grounds upon which the instant judgment rests is the fact that the contract of insurance in question is a Missouri contract and is governed exclusively by the insurance laws of the State of Missouri and the Nebraska law is not controlling. In addition to the many state decisions cited in the opinion in support of this principle (Rec. 202-203), we find ample authorities in the decisions of this Honorable Court sustaining this proposition. One of the earlier cases to which we desire to call attention is *New York Life Insurance Co.* v. *Cravens,* 178 U. S. 389, 20 S. Ct. 962, 148 Mo. 583. This case was originally decided by the Missouri Supreme Court (148 Mo. 583) and was then appealed to the Supreme Court of the United States. In affirming the judgment of the Missouri Supreme Court, which held under the facts in that case that the contract of insurance was a Missouri contract and not a New York contract as was contended by the defendant, this court approved the language used by the Missouri Supreme Court (20 S. Ct. l. c. 965) as follows:

> "Foreign insurance companies which do business in this state do so, not by right, but by grace, and must in so doing, conform to its laws; they cannot avail themselves of its benefits without bearing its burdens; moreover, the state may prescribe conditions upon which it will permit foreign insurance companies to transact business within its borders or exclude them altogether, and in so doing, violates no contractual rights of the company."

Another case of importance is that of *Northwestern Mutual Life Insurance Company* v. *McCue,* 223 U. S. 234,

32 S. Ct. 220, 56 L. Ed. 419. Therein the question involved was the determination of whether or not the laws of the State of Virginia or the State of Wisconsin should be applied in the interpretation of the contract. In 32 S. Ct. l. c. 222, it is said as follows:

> "The obligation of a contract undoubtedly depends upon the law under which it is made. In which state, then, Virginia or Wisconsin, was the policy made? In *Equitable Life Assurance Society* v. *Clements*, (*Equitable Life Assurance Society* v. *Pettus*, 140 U. S. 226, 35 L. Ed. 487, 11 S. Ct. 822) the question arose whether the contract sued on was made in New York or Missouri. The assured was a resident of Missouri, and the application for the policy was signed in Missouri. The policy, executed at the office of the company, provided that the contract between the parties was completely set forth in the policy and the application therefor, taken together. The application declared that the contract should not take full effect until the first premium should have been actually paid during the life of the person proposed for assurance. Two annual premiums were paid in Missouri, and the policy, at the request of the assured, was transmitted to him in Missouri and there delivered to him. The court said 'Upon this record the conclusion is inevitable that the policy never became a completed contract, binding either party to it, until the delivery of the policy and the payment of the first premium in Missouri; and consequently that this policy is a Missouri contract, and governed by the laws of the State of Missouri.' "

The opinion proceeds to examine a multitude of authorities and held that that particular policy of life insurance involved, though executed at the company's office in Wisconsin, was a Virginia contract for the reasons that the application was made by a resident of Virginia within the state; that the policy was delivered to him and that the premiums were paid there and all of the acts necessary to make a completed contract occurred in the State of Virginia.

(c) Another independent state ground upon which the instant decision rests and is sufficient to support said judgment without the decision of any federal question is that of the character of the insurance in question. The opinion ably points out the fact (Rec. 203-208) that at the time the certificate of insurance was issued to Pleasant Bolin there was no state law in Missouri, which permitted fraternal societies to operate in and do a general insurance business within the state. This being true, the Missouri courts have repeatedly held that the petitioner herein was, as a matter of law, doing business under the general insurance laws of the state (Rec. 205-206). The opinion points out that the petitioner nowhere alleged or proved or offered to prove that it had complied with any of the laws of the State of Missouri, and had been licensed to do business as a fraternal society. Therefore the conclusion that the petitioner herein was doing business under the general insurance laws of the state and that the policy of insurance issued herein was as a matter of law, an old line policy of life insurance, is irresistible and the fact that the defendant contended

that it was a fraternal society under the laws of the State of Nebraska did not, as a matter of law, make it a fraternal society in the State of Missouri.

In an early case, the Missouri Supreme Court (*Aloe* v. *Fidelity Mutual Life Association*, 164 Mo. 675) held: That the fact that an insurance company was chartered by another state as an assessment company, and was licensed to do business under its laws as an assessment company, did not make it such nor in any wise change its character or status under the Missouri law and it was further held therein that the liability of the company can in nowise be affected by its name, but the test of liability is the character of the contracts of insurance issued by it.

Conclusion.

Petitioner relies upon the following cases: *Modern Woodmen of America* v. *Mixer*, 267 U. S. 544, 69 L. Ed. 783, 45 Sup. Court Reporter 369, and *Supreme Council Royal Arcanum* v. *Green*, 237 U. S. 542, 59 L. Ed. 1100, 35 Supreme Court Reporter 724.

Respondents contend that these cases are not controlling for the reason that the points at issue were not involved therein.

In *Modern Woodmen* v. *Mixer*, *supra*, the one question involved was the validity of a bylaw subsequently enacted dealing with the long continued absence of a member and in *Supreme Council Royal Arcanum* v. *Green*, the point involved was the right of the society to increase the assessment rates of its members. In each

of these cases, controlling decision of the court of last resort of the place of the society's domicile was urged as a defense to the suits brought in the respective sister states involving the validity of the two aforementioned propositions. In each of the cases, the United States Supreme Court held that the full faith and credit provision of the constitution required that the controlling decisions be followed by the courts of the respective sister states.

In neither of those cases, did it appear that any of the following issues and independent state grounds were considered:

A. The fact that the contract of insurance was a Missouri contract.

B. The fact that the society was not a fraternal society and operating as such in the State of Missouri; but on contrary was doing business in Missouri as an old line life insurance company.

C. The fact that the society had never qualified to do an insurance business in the State of Missouri as a fraternal organization.

D. The question of *ultra vires* and estoppel and in neither of the two cases aforesaid was the question presented of the right of the society to issue the contract of insurance involved. In the instant case, there was no proof of any Nebraska law which would prohibit the issuance of such certificate.

E. Neither was there any question raised in said cases involving the right of the society to change the contractual relation with the holder thereof after his rights had become firmly established and the contract had been fully executed on his part

A reading of the opinion in this case reveals that all of the aforesaid issues were involved in the decision of this cause by the state court. They constitute the independent state grounds and are the substantial grounds upon which the opinion rests, independent of any federal question, thereby bringing this case within the scope of the decisions of this Honorable Court in the following cases:

New York Life Ins. Co. v. *Cravens*, 178 U. S. 389, 20 S. Ct. 952, 148 Mo. 583.

Mutual Life Ins. Co. v. *of New York* v. *Johnson*, 293 U. S. 335, 55 S. Ct. 154.

Northwestern Mutual Life Ins. Co. v. *McCue*, 223 U. S. 234, 32 S. Ct. 220, 56 L. Ed. 319.

Equitable Life Assurance Society v. *Pettus*, 140 U. S. 226, 11 S. Ct. 822, 35 L. Ed. 497.

We respectfully submit that the writ of certiorari should be denied.

L. L. LIVENGOOD,
RAY WEIGHTMAN,
J. S. SHINABARGAR,
A. F. HARVEY,
All of Maryville, Missouri,
Attorneys for Respondents.